IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O O C J

Writ Petition No.l355 of l994

Mrs Usha B Chitale ..Petitioner

vs

The Govt of Mah and ors.. Respondents

Ms Geeta Menon for Petitioner

Mr M D Naik AGP for Respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ

Dated 2.9.2005

P.C:

. The petitioner was appointed as an Assistant Teacher in the 3rd respondent school on l2.6.l97l and resigned from the said school on l2.6.l984. The petitioner thereafter with effect from l3.6.l984 joined the service of 5th respondent school and retired from the said school on l.ll.l99l. The 5th respondent school is run and managed by the 4th respondent Trust. Both the

schools namely Bombay Institute for Deaf Mutes, Mazgaon,Mumbai i.e. 3rd respondent and Karna Badhir Mulanchi Shala i.e. 5th respondent are registered and aided schools.

2. The Government of Maharashtra vide Government Resolution Samaj Kalyan Sankritik Karya Kreeda and Paryatak Vibhag No KDD/l08l/ l7327/CA-2 dated l.2.l984 had given option to the members of the teaching and non-teaching staff of the Government aided schools for the handicappped who retired on or after 3l.3.l98l to opt for pension in lieu of the contributory Provident Fund. As per the G.R.option for pension scheme was to be exercised within six months from the date of the G.R. and it was further provided that the teachers employed on or after 3l.l.l98l would be automatically held eligible for pension scheme. It is the case of the petitioner that she was not given opportunity to exercise her option as per the G.R.dated l.2.l984 by the respondent no. 3 though she submitted her resignation on 30.l.l984 and worked until l2.6.l984. It is her case that being unaware of the said G.R. she accepted the provident fund dues under the belief that she was covered by the Provident Fund Scheme. It is further case of the petitioner that she addressed letter dated l.8.l989

to the respondent no. 4 requesting them to cover her under the pension scheme and also undertook to return provident fund amount received by her alongwith interest. The request of the petitioner was, however, turned down by the letter dated 9.2.l992 by the Desk Officer, Samaj Kalyan Sanskritik Kanya Kreeda and Paryatak Vibhag whereby the petitioner was informed that since she had not opted for pension, her request to cover under the pension scheme cannot be granted.

3. The petitioner ultimately through her advocate addressed notice dated 20.l0.l992 calling upon the respondents to cover her under pension scheme but the respondent. no.l, Director of Social Welfare by his letter dated June l993 declined to accede to the request of the petitioner on the ground that the petitioner had opted for provident fund and hence cannot be covered under the pension scheme. The petitioner has therefore approached this court under Article 226 of the Constitution seeking a writ of mandamus to direct the respondents to cover her under pension scheme and accept the management share of the provident fund contribution paid by her or in the alternative to cover her under pension scheme at least from l3.6.l984. i.e. date of joining the respondent no. 5 school.

4. On behalf of the respondent nos.l and 2 Mr.Vasant Patole, Accounts Officer in the office of the Director of Social Welfare has filed a counter affidavit. It is contended by the respondent nos. l and 2 that the option under the Government Resolution dated l.2.l984 was to be given within six months. The petitioner did .not give her option. On the contrary she resigned from service from Mazgaon school with effect from l2.6.l984 and she had withdrawn entire amount of contributory provident fund including the share of the management in l988. As regards alternative prayer of the petitioner i.e. grant her pension on the basis of her service after joining the 5th respondent with effect from l3.6.l984 it is contended that the petitioner has not rendered minimum qualifying service of l0 years in the respondent no. 5 school and, therefore, her request on the basis of the service in the respondent no. 5 school cannot be accepted.

5. We have heard Ms Geeta Menon, learned counsel for the petitioner and Mr. M.D Naik, learned AGP for the respondent nos l and 2. The only question is whether in the facts and circumstances of the case petitioner is entitled to claim pension under

Maharashtra Civil Services (Pension) Rules, l982. The facts are undisputed. The petitioner has put in more than 20 years of continuous service in recognised and aided handicapped schools. The pension scheme was made applicable to the schools for handicapped for the first time vide G.R.dated l.2.l984. As per the said G.R. option for pension scheme as to be exercised within six months. It appears that petitioner resigned from the school before the completion of six months period and unfortunately she was not made aware of the pension scheme which was introduced vide G.R.dated l.2.l984. The petitioner received a paltry amount of Rs.5554.54 towards her provident fund out of which petitioner's contribution was Rs.37l6.l7. After resigning from the respondent no. 3 the petitioner joined the respondent. no.5 school with effect from 30.6.l984 . As per the said G.R.of l.2.l984 those teachers employed on or after 3l.3.l98l would be automatically held eligible for pension and hence petitioner even otherwise became automatically covered by the pension scheme. It appears that petitioner as well as the management of the school were under bonafide belie that the petitioner was covered under pension scheme and consequently she was not covered by the Provident Fund Scheme. As a result the petitioner is totally

deprived of her retiral benefits although she has rendered 20 years of service. It is also brought on record that prior to the joining of respondent no. 3 school the petitioner was deputed for training as per the scheme of Social Welfare Department. This period of 23 months is also liable to be computed for pensionable service under rule 43 of the Maharashtra Civil Services (Pension) Rules, l982. Our attention was also drawn to rule 46(2) of the Maharashtra Civil Services (Pension) Rules,l982 which specifically provides that resignation shall not entail forfeiture of the past services, if it has been submitted with prior permission. The petitioner is now about 73 years old and bed ridden due to various ailments. In the peculiar facts and circumstances of the case we are inclined to hold that the petitioner is entitled to pension under the G.R. dated l.2.l984.We direct the respondents t cover the petitioner under the pension scheme on the basis of the continuous service rendered by her from l2.6.l97l till her superannuation on l.ll.l99l and release her pentionary dues within two months from today. The petitioner shall refund the management's contribution towards provident fund amount of Rs l059.67 with simple interest at the rate of 9% p.a. from 3.l2.l976 within a period of one month from

today.

. Rule is made absolute accordingly with no order as to costs.